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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re ANDREW A., a Person Coming Under
The Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW A.,

Defendant and Appellant.

F043855

(Super. Ct. No. 53402)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Martin Staven, Judge.

Roshni Mehta, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Charles A. French and Angelo S. Edralin, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Buckley, Acting P.J., Wiseman, J., and Levy, J.

Appellant Andrew A. contends the juvenile court failed to determine whether his receiving stolen property offense (Pen. Code,¹ § 496, subd. (a)) was a felony or misdemeanor and that it erred by ordering him to pay restitution jointly and severally for injuries he did not cause. Agreeing only with Andrew's first contention, we will remand the matter to the juvenile court to declare the nature of the offense.

BACKGROUND

In May 2001, 15-year-old Andrew admitted committing a February 2001 battery on school grounds (Pen. Code, § 243.2, subd. (a)) and an earlier December 2000 battery against the same minor (§ 242). The juvenile court adjudged Andrew a ward of the court and placed him under the supervision of the probation department for a maximum period of confinement (MPC) of one year two months.

In March 2003, pursuant to a negotiated plea agreement, Andrew admitted committing misdemeanor battery in December 2003 (§ 242), felony receiving stolen property in February 2003 (§ 496, subd. (a)), and misdemeanor resisting arrest in February 2003 (§ 148, subd. (a)(1)).² The juvenile court permitted Andrew to continue residing with his parents under various terms and conditions of probation with an MPC of four years. At a separate restitution hearing and after further briefing on the issue, the juvenile court ordered Andrew jointly and severally liable with three juvenile co-participants for \$3,495.38 to the victim, Julian R., of the December 2003 battery.

¹ Further statutory references are to the Penal Code unless otherwise indicated.

² In exchange for Andrew's negotiated plea, the prosecution dismissed a felony allegation of second degree robbery (§ 211) and reduced a felony allegation of assault with a deadly weapon by force likely to produce great bodily injury (§ 245, subd. (a)(1)) to misdemeanor battery (§ 242). On its own motion, the juvenile court also dismissed a violation of probation petition. (Welf. & Inst. Code, § 777.)

DISCUSSION

A. *Nature of Andrew's Receiving Stolen Property Offense*

Andrew correctly contends the juvenile court failed to declare or express its awareness of its ability to reduce his admitted felony receiving stolen property violation (§ 496, subd. (a)) to a misdemeanor. As an offense punishable against adults in either county jail or state imprisonment, receiving stolen property is a “wobbler” offense. (§ 17; *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903.) Under Welfare and Institutions Code section 702,³ the juvenile court “shall declare the offense to be a misdemeanor or felony.”

California Rules of Court, rules 1487(f)(9) and 1493(a)(1), implement the wobbler requirement of section 702. Rule 1487(f)(9) requires that in accepting a juvenile’s admission or plea of no contest, “[i]f any offense may be found to be either a felony or misdemeanor, the court shall consider which description shall apply and shall expressly declare on the record that it has made such consideration and shall state its determination as to whether the offense is a misdemeanor or a felony.” Rule 1493(a)(1), which governs juvenile dispositional hearings, states that “[i]f the court has not previously considered whether any offense is a misdemeanor or felony, the court must do so at this time and state its finding on the record. If the offense may be found to be either a felony or a misdemeanor, the court must consider which description applies and must expressly declare on the record that it has made such consideration and must state its finding as to whether the offense is a misdemeanor or a felony.” (See also Cal. Rules of Court, rules 1488(e)(5) & 1494(a).)

The California Supreme Court has determined that if a juvenile court does not characterize the nature of an offense, and the record fails to establish the court was aware

³ Further references to section 702 are to Welfare and Institutions Code, section 702.

of its discretion, an appellate court must remand the matter to the juvenile court to declare the offense either a misdemeanor or felony. (*In re Manzy W.* (1997) 14 Cal. 4th 1199, 1209; *In re Eduardo D.* (2000) 81 Cal.App.4th 545, 549.) The juvenile court's declaration is mandatory; section 702 "means what it says." (*In re Kenneth H.* (1983) 33 Cal.3d 616, 619.) "[N]either the pleading, the minute order, nor the setting of a felony-level period of physical confinement may substitute for a declaration by the juvenile court as to whether an offense is a misdemeanor or felony." (*In re Manzy W.*, *supra*, at p. 1208.) Although the pleading, minute order, and felony-level period of confinement here all indicate the juvenile court intended to treat Andrew's receiving stolen property violation as a felony, the juvenile court never specifically designated the offense a felony or expressed its intent not to exercise its discretion to reduce it to a misdemeanor. Under *Manzy W.*, we must remand the matter to the juvenile court to declare the nature of the offense.

B. *Joint and Several Restitution*

Andrew further contends the juvenile court erred by ordering him jointly and severally liable for paying the full amount of victim restitution because he did not cause Julian's medical expenses and there was no rehabilitative purpose behind the order. We disagree.

Welfare and Institutions Code section 730.6, subdivisions (a)(1) and (h), provide that a minor shall reimburse a victim for the amount of the loss resulting from the minor's conduct bringing him within the juvenile court's jurisdiction. A joint and several restitution order "merely means that the defendant (or juvenile) is responsible to make restitution for the full amount of the victim's losses, but that the defendant's obligation shall be reduced by any payments to the victim by other wrongdoers." (*In re S.S.* (1995) 37 Cal.App.4th 543, 550.) Restitution may help a juvenile understand he has harmed others and that he has a responsibility to make them whole; such a purpose, however, "would be directly undermined by a rule that each participant in a criminal scheme may

be held responsible only for a portion of the overall harm.” (*Id.* at p. 550.) The juvenile court is therefore vested with discretion to apportion restitution in a manner that will effectuate the legislative objectives of making the victim whole, rehabilitating the minor, and deterring future delinquent behavior. (*Id.* at p. 549; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1387.)

“The standard of review of a restitution order is abuse of discretion. ‘A victim’s restitution right is to be broadly and liberally construed.’ [Citation.] ‘ “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.” ’ ” (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.)

Although Andrew stipulated a factual basis supported his admissions, the police and probation officer’s report more specifically described that Julian approached a store where Andrew and three other minors were standing. As Julian passed, Andrew hit Julian in the face and all four youth began hitting him until he fell to the ground. Julian stood up, took off his jacket, and began fighting back. Andrew picked up Julian’s jacket and Julian hit him to get it back. Meanwhile, one of the other youths, Fabian G., hit Julian in the head with a brick. Dinuba police took Andrew and his three companions into custody on charges of assault with a deadly weapon and robbery; Andrew’s blood alcohol level tested 0.07 percent at the time of booking.

Julian suffered \$3,495.38 in expenses from the assault, which included \$1,480.00 for an ambulance, \$1,334.75 for a hospital emergency room, \$320.00 for an emergency room doctor plus a \$12.63 collection fee, \$175.00 for a CAT scan, \$150.00 for the jacket, and \$23.00 for destroyed jeans. Andrew concedes that he is responsible to Julian for the jacket and jeans, but disagrees that he should be liable for any of Julian’s medical expenses. Andrew asserts, but never proved, the medical expenses resulted from Fabian who hit Julian with the brick. He also claims there was no evidence Andrew caused, encouraged, or reasonably anticipated Fabian’s actions.

Regardless whether Andrew or Fabian directly caused Julian's injuries, we agree with the juvenile court that Andrew was sufficiently culpable to warrant the restitution order. After reviewing the police report summarizing the assault, the juvenile court concluded:

"The Court finds that the minor is subject to the entire amount. The Court's reasoning is that the minor, basically, started the fight. When the first phase of the fight was over, the minor, by his actions, caused the problem to continue by taking the jacket of the victim and walking towards the pickup truck with it. [¶] The victim, in turn, responded, based on the theft of his jacket. Got in an altercation with the minor. It would appear the minor also threw one of the victim's shoes in the pickup, and it was at the point that the victim was at the pickup that he got hit by one of the cominors [*sic*] or co-conspirators with the brick. [¶] The Court feels that the minor's involvement throughout the incident is, and his activities are such that it's only fair and appropriate that he pay the full amount."

We agree with the juvenile court there was a substantial nexus between Andrew's conduct and Julian's injuries. Accordingly, the juvenile court did not abuse its discretion in ordering Andrew jointly and severally liable for Julian's medical expenses.

DISPOSITION

The case is remanded to the juvenile court to declare his receiving stolen property violation (§ 496, subd. (a)) either a misdemeanor or felony and for possible recalculation of his maximum period of confinement. The judgment is otherwise affirmed.